

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Myrna de Jesus,

10 Plaintiff,

11 v.

12 UnitedHealth Group,

13 Defendant.
14

No. CV-22-00532-PHX-DJH

ORDER

15 Pending before the Court is Plaintiff's Application to Proceed in District Court
16 Without Prepaying Fees or Cost (Doc. 6). Upon review, Plaintiff's Application, signed
17 under penalty of perjury, indicates that she is financially unable to pay the filing fee. The
18 Court will grant Plaintiff's Application and allow him to proceed *in forma pauperis*
19 ("IFP"). Pursuant to 28 U.S.C. § 1915(e)(2), the Court will proceed to screen Plaintiff's
20 Complaint (Doc. 1).

21 **I. Legal Standard**

22 When a party has been granted IFP status, the Court must review the complaint to
23 determine whether the action:

24 (i) is frivolous or malicious;

25 (ii) fails to state a claim on which relief may be granted; or

26 (iii) seeks monetary relief against a defendant who is immune from such relief.

27 See 28 U.S.C. § 1915(e)(2)(B).¹ In conducting this review, "section 1915(e) not only
28

¹ "While much of § 1915 outlines how prisoners can file proceedings *in forma pauperis*,

1 permits but requires a district court to dismiss an [IFP] complaint that fails to state a claim.”
 2 *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (citation omitted).

3 Federal Rule of Civil Procedure 8(a) requires complaints to make “a short and plain
 4 statement of the claim showing that the pleader is entitled to relief.” While Rule 8 does
 5 not demand detailed factual allegations, “it demands more than an unadorned, the
 6 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
 7 (2009).² “Threadbare recitals of the elements of a cause of action, supported by mere
 8 conclusory statements, do not suffice.” *Id.* A complaint “must contain sufficient factual
 9 matter, accepted as true, to state a claim to relief that is plausible on its face.” *Id.* (quoting
 10 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible “when
 11 the plaintiff pleads factual content that allows the court to draw the reasonable inference
 12 that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at
 13 556). A complaint that provides “labels and conclusions” or “a formulaic recitation of the
 14 elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. Nor will a complaint
 15 suffice if it presents nothing more than “naked assertions” without “further factual
 16 enhancement.” *Id.* at 557.

17 The Court must accept all well-pleaded factual allegations as true and interpret the
 18 facts in the light most favorable to the plaintiff. *Shwarz v. United States*, 234 F.3d 428,
 19 435 (9th Cir. 2000). That rule does not apply, however, to legal conclusions. *Iqbal*, 556
 20 U.S. at 678. The Court is mindful that it must “construe pro se filings liberally when

21 §1915(e) applies to all *in forma pauperis* proceedings, not just those filed by prisoners.”
 22 *Long v. Maricopa Cmty. College Dist.*, 2012 WL 588965, at *1 (D. Ariz. Feb. 22, 2012)
 23 (citing *Lopez v. Smith*, 203 F.3d 1122, 1126 n. 7 (9th Cir. 2000) (“[S]ection 1915(e) applies
 24 to all *in forma pauperis* complaints[.]”); *see also Calhoun v. Stahl*, 254 F.3d 845 (9th Cir.
 25 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”)
 (citation omitted). Therefore, section 1915 applies to this non-prisoner IFP complaint.

26 ² “Although the *Iqbal* Court was addressing pleading standards in the context of a Rule
 27 12(b)(6) motion, the Court finds that those standards also apply in the initial screening of
 28 a complaint pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A since *Iqbal* discusses the
 general pleading standards of Rule 8, which apply in all civil actions.” *McLemore v. Dennis
 Dillon Automotive Group, Inc.*, 2013 WL 97767, at *2 n. 1 (D. Idaho Jan. 8, 2013).

1 evaluating them under *Iqbal*.” *Jackson v. Barnes*, 749 F.3d 755, 763–64 (9th Cir. 2014)
 2 (quoting *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)).

3 **II. Discussion**

4 Plaintiff alleges that she was hired to work for Defendant United Health Group.
 5 (Doc. 1 at 1). She alleges that Defendant falsely claimed she “screamed loudly and cursed
 6 at everyone inside the hospital for no reason” and that Defendant terminated her
 7 employment. (*Id.* at 4). The Court infers two causes action; defamation, and breach of
 8 contract. (*Id.*) (“Defendant defamed Plaintiff; defendant recklessly slandered plaintiff . . .
 9 . Defendant made the following breaches . . .”).

10 To bring a claim for defamation, a plaintiff must show the defendant published a
 11 false and defamatory communication and that the defendant “(a) knows that the statement
 12 is false and it defames the other, (b) acts in reckless disregard of these matters, or (c) acts
 13 negligently in failing to ascertain them.” *Rowland v. Union Hills Country Club*, 757 P.2d
 14 105, 110 (Ariz. Ct. App. 1988) (citation omitted). To be published, a communication must
 15 be made to a third party. *Dube v. Likins*, 167 P.3d 93, 104 (Ariz. Ct. App. 2007). The
 16 Court can reasonably infer from Plaintiff’s Complaint that she alleges Defendant recklessly
 17 made a false statement about her. However, the Court cannot determine whether or how
 18 Defendants published this statement to a someone besides Plaintiff or Defendant. While
 19 Plaintiff may have received the statement, it is uncertain whether anyone else besides
 20 Defendant did. Therefore, the Court will dismiss Plaintiff’s defamation claim.

21 To bring a claim for breach of contract, a plaintiff must show the existence of a
 22 contract, the breach of that contract, and subsequent damages. *First Am. Title Ins. Co. v.*
 23 *Johnson Bank*, 372 P.3d 292, 297 (Ariz. 2016). Although Plaintiff makes shows she has
 24 been harmed, through her termination, she does not show what specific contractual
 25 agreement has been breached. Therefore, the Court will dismiss Plaintiff’s breach of
 26 contract claim.

27 **III. Leave to Amend**

28 Because the Court has dismissed both of Plaintiff’s Claims, it will dismiss the

1 Complaint and grant leave for Plaintiff to file a first amended complaint within **thirty (30)**
 2 **days** from the date of entry of this Order. *See* Fed. R. Civ. P. 15(a)(2) (stating that leave
 3 to amend should be “freely” given “when justice so requires”).

4 If Plaintiff files another complaint, she must clearly designate on the face of the
 5 document that it is the “First Amended Complaint.” Plaintiff should tell her case’s story
 6 in a short and plain manner then state each claim or cause of action a separate count,
 7 alleging facts that that satisfy all of the elements of the claims she is brining. For example,
 8 she must allege the fact that the defamatory statements were published to a third party and
 9 specifying the existence of a contract whose particular terms prohibit Defendant’s actions.

10 Plaintiff’s amended complaint should follow the form detailed in Rule 7.1 of the
 11 Local Rules of Civil Procedure (“LRCiv”). Examples of different types of complaints
 12 demonstrating the proper form can be found in the appendix of forms that is contained with
 13 the Federal Rules of Civil Procedure (forms 11–21).³ This amended complaint must be
 14 retyped or rewritten in its entirety and may not incorporate any part of the original
 15 Complaint by reference. It must also clearly state the grounds for this Court’s jurisdiction,
 16 either by bringing a federal cause of action or by showing how the Court may exercise its
 17 diversity jurisdiction. *See* Fed. R. Civ. P. 8(a)(1).

18 The Court recommends Plaintiff review the information available in the District
 19 Court’s Handbook for Self-Represented Litigants, which is available online.⁴ Plaintiff
 20 should also be aware that “an amended complaint supersedes the original complaint and
 21 renders it without legal effect[.]” *Lacey v. Maricopa County*, 693 F.3d 896, 927 (9th Cir.
 22 2012) (en banc). Thus, after amendment, the Court will treat an original complaint as
 23 nonexistent. *Id.* at 925.

24 ///

25 ³ Those forms as well as the Federal Rules of Civil Procedure and the Local Rules, as well
 26 as other information for individuals filing without an attorney may be found on the District
 27 Court’s internet web page at www.azd.uscourts.gov/.

28 ⁴ The Handbook may be found at <http://www.azd.uscourts.gov/handbook-self-represented-litigants>.

I. Warning

Plaintiff is advised that if she elects to file an amended complaint but fails to comply with the Court's instructions explained in this Order, the action will be dismissed pursuant to section 28 U.S.C. § 1915(e) and/or Rule 41(b) of the Federal Rules of Civil Procedure. *See McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996) (affirming dismissal with prejudice of amended complaint that did not comply with Rule 8(a)). If Plaintiff fails to prosecute this action, or if she fails to comply with the rules or any court order, the Court may dismiss the action with prejudice pursuant to Rule 41(b) of the Federal Rule of Civil Procedure. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992); *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995).

Accordingly,


IT IS HEREBY ORDERED that Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 6) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's Complaint (Doc. 1) is dismissed with leave to file a First Amended Complaint within **thirty (30) days** of the date this Order is entered.

IT IS FURTHER ORDERED that if Plaintiff does not file a First Amended Complaint within **thirty (30) days** of the date this Order is entered, the Clerk of Court shall dismiss this action without further order of this Court; and

IT IS FINALLY ORDERED that if Plaintiff elects to file a First Amended Complaint, it may not be served until and unless the Court issues an Order screening the amended complaint pursuant to 28 U.S.C. § 1915(e)(2).

Dated this 5th day of May, 2022.


 Honorable Diane J. Humetewa
 United States District Judge